CONGRESSIONAL BUDGET OFFICE
COST ESTIMATE

October 7, 1998

H.R. 3888

Telecommunications Competition and Consumer Protection Act of 1998

As ordered reported by the House Committee on Commerce on September 24, 1998

SUMMARY

H.R. 3888 would amend existing law and change current policies regarding licenses for use of the electromagnetic spectrum. It would modify the terms of the Federal Communication Commission's (FCC's) financing of licenses awarded pursuant to the C-block auction of spectrum. (The C-block refers to 30 megahertz of the electromagnetic spectrum allocated to personal communications services in each of 493 subdivisions of the nation and its territories.) The bill also would repeal the statutory deadline for auctioning certain frequencies and would direct the commission to grant three cellular licenses without compensation, subject to certain conditions. Other provisions would amend the Communications Act of 1934 to prohibit telecommunications carriers or service resellers from submitting or executing changes in a subscriber's selection of a provider of telephone exchange or toll service except in accordance with procedures prescribed by the FCC.

CBO estimates that enacting H.R. 3888 would increase direct spending by $600 million in fiscal year 1999 and by an additional $1 million in 2000. Provisions establishing new penalties could affect receipts, but CBO estimates that such receipts would not be significant. This bill also would affect discretionary spending, but CBO estimates that the net impact would be negligible. Because the bill would affect direct spending and receipts, pay-as-you-go procedures would apply.

The bill contains an intergovernmental mandate as defined in the Unfunded Mandates Reform Act (UMRA) because it would preempt some state laws governing changes in a subscriber's choice of telecommunications carriers. CBO estimates that the cost to states to comply with this mandate would not exceed the threshold established in UMRA ($50 million in 1996, adjusted for inflation).

H.R. 3888 would impose a private-sector mandate, as defined in UMRA, on telecommunications carriers, including resellers of telecommunication services. CBO

estimates that the cost of this mandate would not exceed the annual threshold for private-sector mandates ($100 million in 1996, adjusted for inflation).

DESCRIPTION OF THE BILL'S MAJOR PROVISIONS

Title I would prohibit telecommunications carriers or service resellers from submitting or executing changes in a subscriber's selection of a provider of telephone exchange or toll service except in accordance with procedures prescribed by the FCC.

Title III would modify the terms of the FCC's financing of licenses awarded in the 1996 auction of the C-block frequencies. In that auction, winning bids of $10 billion were recorded on the budget, and the winners paid 10 percent of that amount as a down payment. Licensees agreed to pay the remaining 90 percent to the FCC in installment payments over a 10-year period. The FCC is unlikely to recover the amounts due under the original notes, however. The FCC recently granted C-block licensees various forms of financial relief if they agreed to return the license to the FCC, or to give up the right to use half of the frequencies covered by the initial license, or to resume the original payment schedule. In those elections, which were made in June 1998, licensees chose to return licenses that accounted for $1.5 billion of the $10 billion bid in 1996. Payments are expected to resume on another $1.1 billion, and another $30 million was prepaid. Three licensees, which together account for the remaining $7.2 billion of the original bids, have filed for bankruptcy protection and their elections were conditioned on the outcome of those proceedings.

Title III would offer C-block licensees two additional forms of relief. Under one option, licensees who are willing to return all of their licenses to the FCC would have all of their debt obligations to the FCC canceled and would receive bidding credits equal to the sum of all down payments, interest, and installment payments made by the licensee prior to the date of enactment. These bidding credits could only be used in bidding on licenses in a reauction of C-block frequencies but would be transferrable in whole or in part to other entities eligible to participate in that auction. Under this bill, that reauction must take place no later than March 24, 1999, which is when the FCC expects to conduct a reauction of returned C-block frequencies under current law.

The second option for relief would affect the debt obligations of licensees that choose to retain their licenses. The bill would require that, after the reauction takes place in March 1999, the FCC write down the debt obligation of any licensee that has "commenced offering service to the public" in a basic market area. The debts associated with that market area would be reduced so that the amounts owed by the licensee would be comparable to the winning bids in the March 1999 reauction.

Title IV would repeal the September 1998 deadline for the auction of 5 megahertz of frequencies formerly used by federal agencies. This spectrum was to be auctioned as part of 25 megahertz to be used for general wireless communications services (GWCS). The FCC has postponed that auction for technical and market reasons.

Title V would designate certain companies as tentative selectees for the award of cellular licenses in three rural service areas (RSAs): one in the Florida Keys, one in northeastern Pennsylvania, and one in southeastern Minnesota. These companies would be allowed to amend their license applications, which the FCC had rejected when they were originally filed. If the revised applications conform to the FCC's current guidelines, the companies would be awarded the licenses within 90 days after enactment of the bill. If the commission determines that the companies are ineligible, the FCC would be required to grant the licenses through competitive bidding.

ESTIMATED COST TO THE FEDERAL GOVERNMENT

The estimated budgetary impact of H.R. 3888 is shown in the following table. The costs of this legislation fall within budget functions 370 (commerce and housing credit) and 950 (undistributed offsetting receipts).

	By Fiscal Year, in Millions of Dollars				
	1999	2000	2001	2002	2003
CHANGES IN DIRECT SPENDING [a]					
Estimated Budget Authority	600	1	0	0	0
Estimated Outlays	600	1	0	0	0

a. H.R. 3888 also would affect revenues and discretionary spending, but CBO estimates that those effects would be less than $500,000 a year.

BASIS OF ESTIMATE

Direct Spending

CBO estimates that enacting the provisions in H.R. 3888 that apply to the C-block auction would increase direct spending by about $600 million in fiscal year 1999. Awarding licenses to certain RSA applicants would result in a loss of offsetting receipts of about $1 million in

2000. Other provisions in the bill could affect direct spending, but CBO estimates that the costs would not be significant.

C-block Licenses. CBO expects that the modifications authorized by title III would increase the subsidy for the C-block licenses relative to current law. Under title III, the FCC would retain the original down payments, but those using the bidding credits in the reauction would reduce their cash payments by the amount of the credit. Hence, granting these bidding credits would eliminate the possibility, under current law, that the FCC would retain the original down payment and collect the full market value of the licenses at the time of the reauction. Being able to reauction most of the C-block licenses in 1999 might accelerate the receipt of payments from licenses that otherwise would be tied up in bankruptcy courts, but CBO estimates that such savings would not offset the cost of providing the bidding credits. Likewise, writing down the debt obligations of licensees "offering service to the public" who otherwise would pay the amounts scheduled under their existing agreements with the FCC would further reduce the proceeds expected under current law.

The budgetary effects of title III are measured on a credit-reform basis because, by accepting payments over time for the C-block licenses, the FCC has made direct loans to the licensees. Under credit reform procedures, the government recorded auction receipts of about $10 billion from the C-block auction and created a separate account to record the subsidy for the loans, which in this case involves an allowance for defaults. By the end of fiscal year 1998, the Office of Management and Budget had recorded subsidies totaling $5.6 billion, suggesting that the net proceeds from the C-block auction will not exceed $4.4 billion (on a present-value basis) under current law. Legislative actions such as those in title III that would change the terms (and hence the subsidy costs) of existing loans are classified as loan modifications under credit reform. Any costs or savings resulting from such modifications are estimated on a discounted, cash-flow basis and are recorded in the fiscal year in which the legislation is enacted.

Estimates of the changes in subsidy costs must account for legal, regulatory, and market uncertainties. The FCC maintains that spectrum licenses should not be considered property protected by bankruptcy law. The issue remains before the courts, and the FCC continues to press its case. In addition, the response of licensees to new options provided by the bill cannot be known with certainty and is complicated by its interaction with developments in the bankruptcy courts. Finally, the market value of the licenses in any future reauction is also uncertain. CBO's estimate takes account of those uncertainties by assigning a 50 percent chance that the courts will ultimately uphold the FCC's position, which would allow the FCC to keep the original down payment, recover the licenses, and reauction the licenses for their full market value. We also assume that most, but not all, of the licensees that elected in June to resume payments will fulfill their current obligations.

CBO estimates that enacting title III would reduce the expected value of the net proceeds from C-block licensees by about $600 million. We assume that Next Wave, which accounts for nearly half of the value of all C-block licenses and has filed for bankruptcy protection, would be among those choosing to return their licenses in exchange for bidding credits. Our estimate of the costs associated with writing down the debt of licensees is based on information regarding licensees that are already providing service to the public (which represent loan obligations of about $300 million) and an assumed reduction of about 75 percent from the current level of scheduled payments.

GWCS deadline. CBO estimates that repealing the September 30, 1998, deadline for this auction would have no budgetary impact because the FCC was unable to conduct the auction under current law for technical and economic reasons. Based on the FCC's current plans, CBO expects this auction to occur sometime in the next four years.

RSA cellular licenses. CBO expects that, under current law, the FCC will award licenses in these three RSAs through a competitive auction and that the proceeds of these auctions will be comparable to the amounts paid for similar licenses in the past. Assuming that the three companies designated by the bill would satisfy the FCC's current guidelines, these licenses would instead be awarded without compensation. Therefore, CBO estimates that enacting title V would result in forgone offsetting receipts of about $1 million in fiscal year 2000.

Revenues

Title I would establish new penalties for telecommunications carriers that make unauthorized changes to subscriber's selection of a carrier (frequently called “slamming”). This new penalty could increase receipts, but CBO estimates that any additional amounts collected would not be significant.

Spending Subject to Appropriation

Based on information from the FCC, CBO estimates that the commission would spend about $3 million annually to implement this bill, assuming appropriation of the necessary amounts. The FCC's administrative costs would increase because it would be required to issue and enforce two new rules dealing with unauthorized changes in a subscriber's provider of telephone services. Under the bill, providers of telephone service would have an incentive to settle disputes among themselves and with customers concerning unauthorized changes in service, without FCC intervention. This estimate assumes that formal commission orders would not be required to resolve those cases in which the FCC is called upon to resolve disputes. Because the commission is authorized under current law to collect fees from the telecommunications industry sufficient to offset the cost of its enforcement program, CBO expects that the costs of title I would be offset by an increase in collections credited to annual appropriations for the FCC. Hence, we estimate that the net effect on discretionary spending would be negligible in each year.

PAY-AS-YOU-GO CONSIDERATIONS

The Balanced Budget and Emergency Deficit Control Act sets up pay-as-you-go procedures for legislation affecting direct spending or receipts. The net changes in outlays and governmental receipts that are subject to pay-as-you-go procedures are shown in the following table. For purposes of enforcing pay-as-you-go procedures, only the effects in the budget year and the succeeding four years are counted.

	By Fiscal Year, in Millions of Dollars									
	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
Changes in outlays	600	1	0	0	0	0	0	0	0	0
Changes in receipts	0	0	0	0	0	0	0	0	0	0

ESTIMATED IMPACT ON STATE, LOCAL, AND TRIBAL GOVERNMENTS

The bill contains an intergovernmental mandate as defined in UMRA, because it would preempt state anti-slamming laws that impose more restrictive requirements than those imposed by the bill. According to the National Conference of State Legislatures, at least 10 states have anti-slamming laws. If their laws prescribe penalties or fines that are higher than those in the bill, these states would collect less than they would under current laws. Based on information about states' recent collections of fines, CBO estimates that costs to states would not exceed the threshold established in UMRA.

ESTIMATED IMPACT ON THE PRIVATE SECTOR

H.R. 3888 would impose a private-sector mandate, as defined by UMRA, on telecommunications carriers, including resellers of telecommunication services. CBO estimates that the cost of this mandate would not exceed the annual threshold for private-sector mandates ($100 million in 1996, adjusted for inflation).

H.R. 3888 would require carriers to comply with practices to prevent slamming (the changing of a consumer's provider of telephone service without his or her knowledge or consent) prescribed by either an industry-led council or the FCC. Based on information provided by a telecommunications trade association, CBO estimates that because requirements imposed by an industry-led council probably would be less costly and burdensome than FCC regulations, most carriers would choose to comply with the council's requirement. Since many carriers currently require, either voluntarily or because of state and federal law, some type of verification and notification of a subscriber's selection, the cost, if any, to those carriers would be minor. The aggregate direct cost of new rules to carriers that do not currently meet the likely standards also would not be great, although some such carriers may lose revenues if fewer customers subscribe to their service, but total industry revenues should not be affected. Furthermore, enactment of H.R. 3888, which would preempt some state regulations, would be less costly and onerous to the carriers than complying with a variety of state laws. Thus, CBO estimates that the aggregate cost to the carriers of compliance with anti-slamming practices would be well below the cost threshold for private-sector mandates.

PREVIOUS CBO ESTIMATE

On April 7, 1998, CBO prepared an estimate for S. 1618, a bill to amend the Communications Act of 1934 to improve the protection of consumers against "slamming" by telecommunications carriers, and for other purposes, as ordered reported by the Senate Committee on Commerce, Science, and Transportation on March 12, 1998. The "slamming" provision in title I of H.R. 3888 is similar to S. 1618, but CBO estimated a higher FCC cost of about $6 million a year for S. 1618 because that bill would require the commission to issue formal orders to resolve disputes.

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